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MEMORANDUM TO THE PRESIDENT  
Options For The Law Of The Sea  
Executive Summary

ISSUE FOR DECISION:

Should the United States seek to negotiate changes consistent with US law of the sea objectives at the Third United Nations Conference on the Law of the Sea or withdraw from the negotiations?

Background

Since 1973, the Third United Nations Conference on the Law of the Sea has been negotiating a treaty which would establish a legal regime covering military and commercial navigation and overflight, deep seabed mineral resource development, the extent and nature of coastal State jurisdiction, fisheries conservation and management, marine scientific research, prevention and control of ocean pollution, continental shelf rights, and the peaceful settlement of disputes. The Conference was expected to conclude negotiations and to open a treaty for signature in 1981.

Serious questions were raised in the US, however, concerning the adequacy of the Draft Convention, particularly with respect to the regime it would establish for deep seabed mineral resource development. A Senior Interdepartmental Group has completed a review of the draft Law of the Sea Convention.

Principal Conclusions of the Interagency Review

Navigation and overflight provisions are acceptable. Any deterioration, however, would render this portion of the treaty unacceptable. A favorable treaty text would serve US interests in discouraging the expansion of coastal State claims adverse to our navigation interests.

Deep seabed mining provisions are clearly contrary to US interests and objectives. The current text renders the treaty unratifiable. Significant, though perhaps not fully satisfactory, improvements can be negotiated with little risk to other important elements of the treaty package.

Other provisions are, with certain limited exceptions, generally consistent with US interests.

NSC review completed.

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### Options for Future US Law of the Sea Policy

The Interagency Group proposes two options for consideration:

Option I. Withdraw from the Law of the Sea Conference prior to the next session.

Option II. Continue participation in the Law of the Sea Conference to secure, through negotiations, the five objectives set forth below.

### Agency Recommendations

The Interdepartmental Group concluded that it would be extremely difficult to satisfy all US objectives with respect to the deep seabed mining provisions of the treaty. Nevertheless, there is an opportunity to seek and obtain substantial improvements.

The Departments of Commerce, Defense, Energy, Labor, State, Transportation, and Treasury, the Environmental Protection Agency, and the National Science Foundation recommend Option II. The Department of the Interior does not support Option II as presently drafted.

### US Objectives Under Option II

If Option II is decided upon, the Interdepartmental Group believes that the US negotiating effort should be designed to establish a deep seabed mining regime which satisfies the following objectives. The US delegation is to regard the fulfillment of these objectives as mandatory. Satisfying these objectives would, among other things, minimize the impact of New International Economic Order principles which could create adverse precedents for other negotiations. Our objectives would be a treaty which:

- First, will not deter the development of any deep seabed mineral resources to meet national and world demand.

- Second, will assure national access to deep seabed mineral resources by current and future qualified entities so as to enhance US security of supply, so as to avoid monopolization of deep seabed mineral resources by the operating arm of the International Authority, the Enterprise, and so as to promote economic development of the resources.

- Third, will reserve for the US a decision-making role in the deep seabed institution which fairly reflects the relative weight of US political and economic interests and financial contributions, and effectively protects them.

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- Fourth, will not allow for amendments to enter into force without the approval of the US, including advice and consent of the US Senate, and will not set other undesirable precedents for international organizations.

- Fifth, will be such as to make it likely to receive the advice and consent of the Senate if the President decides to support ratification. (To this end, the treaty would not contain provisions that would create serious political and commercial difficulties, including provisions for the mandatory transfer of private technology, and participation by and funding for national liberation movements.)

Guidelines For Seeking Improvements In The Draft Convention

The Interdepartmental Group has agreed that the following guidelines should be used as the basis for the US negotiating effort. The Group realizes, however, that all of these guidelines cannot be satisfied to the fullest extent and has, therefore, established priorities among them. The Group believes that if the priority guidelines were substantially satisfied and progress made in the other areas listed, the Convention which emerged could meet the five objectives set forth above.

The following six guidelines indicate the kind of improvements to which the Group attaches the highest priority:

1. The procedures and decision-making system of the Authority should enable the US, in concert with a few allies, (1) to ensure that qualified deep seabed miners of manganese nodules and other deep seabed minerals, current and future, receive contracts and are allowed to mine; (2) to achieve acceptable rules and regulations applicable to development of all deep seabed minerals; (3) to insulate deep seabed miners from politically motivated interference from the Authority; and (4) to block adverse decisions on important financial/budgetary questions concerning the Authority and the Enterprise. The attainment of this objective would not only repair many of the defects which have been identified but could also facilitate the attainment of most of the following objectives.

2. The production policies of the Authority should be amended by elimination or relaxation of those production limitations which discourage production by private enterprise of deep seabed mineral resources and which could artificially stimulate competition among potential deep seabed miners.

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3. The technology transfer provisions should be revised to eliminate the mandatory nature of the transfer of private technology.

4. The provisions on the review conference should be revised so that any amendment to the deep seabed provisions of the treaty must have the the consent of the US before entering into force.

5. National liberation movements should not be parties to the treaty or share in any revenues controlled by the Authority.

6. New International Economic Order precedents should be minimized.

Beyond these, the Group attaches considerable importance to the following areas:

-- establishment of separation of powers between the Assembly and Council to minimize the possibility that the Assembly can interfere with the Council's exercise of power entrusted to it;

-- minimization of the possibility that the Authority may expand or abuse its powers;

-- substantial reduction or elimination of discriminatory privileges of the Enterprise;

-- reduction of financial burdens on the US Government and private operators.

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